IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929

Crl.Rev.Pet.No. 444 of 1999()

CRA.140/1995 of I ADDL. SESSIONS COURT, PALAKKAD
CC.127/1992 of JFCM, MANNARKKAD.

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REVN. PETITIONER: APPELLANT/ACCUSED

P.R.ULAHANNAN, S/O.OUSEPH
THADATHIPARAMBIL HOUSE
SRIKRISHNAPURAM P.O.
PALAKKAD DIST.

BY ADV. SRI.A.P.CHANDRASEKHARAN (SR.)
SMT.PRABHA R.MENON
SRI.PUSHPARAJAN KODOTH
SRI.M.KRISHNAKUMAR

RESPONDENTS: COMPLAINANT/STATE

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 18/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

O R D E R

NO REPRESENTATION. DISMISSED FOR NON-PROSECUTION.

18.6.2007 SD/- K.R.UDAYABHANU, JUDGE

/TRUE COPY/

P.A. TO JUDGE

ORDER ON CRL.M.P.NO.1915/1999 IN CRL.R.P.NO.444/1999

DISMISSED

18/6/2007 SD/- K.R.UDAYABHANU, JUDGE

/TRUE COPY/

P.A. TO JUDGE

K.R. UDAYABHANU, J.

CRL.R.P.NO. 444 OF 1999

DATED THIS THE 12th July 2007

ORDER

The revision petitioner is the accused in C.C.No.127/1992 in the file of the Judicial Magistrate of First Class, Mannarkkad who has been convicted for the offence under Sections 279, 337, 338 and 304(A)I.P.C. and stands sentenced to pay a fine of 1,000/- and in default to undergo simple imprisonment for 45 days for the offence under Section 279 I.P.C. and to undergo simple imprisonment for one year under Section 304(A) I.P.C. No separate sentence was awarded for the offences under Sections 337 and 338 I.P.C. Driving licence was suspended for a period of one year.

2. The prosecution case is that on 6-9-1991 the accused being the driver of the bus KLG 8447 and while driving the same through Palakkad – Mannarkkad road in a rash and negligent manner so as to endanger human life and at about 11 a.m. when reached at Chooriyode it collided with another

bus bearing registration No. KL-10-1949 which was coming from the opposite direction and as the result of the impact the minor son and the wife of PW1 lost their lives.

3. The evidence adduced in the matter consisted of the testimony of Pws. 1 to 44 and Exts.P1 to P16. Both the courts have concurrently found that the accused is guilty of the offences alleged mainly based on the objective evidence contained in Ext.P2 scene mahazar, as per which the bus driven by the accused/revision petitioner was found to be clearly on the wrong side in the road. There was a tyre mark of the right rear wheel of the other bus extending 1.5 metres on the eastern side of the road which was the right side of the above bus. The witnesses have also testified that both the buses were driven in over speed. The driver of the other bus was also charge sheeted.

4. All the same, the unchallenged version in Ext.P2 would indicate that the bus driven by the accused was totally on the wrong side. Of course, counsel for the revision petitioner has contended that Pw1 has stated that that the driver of the other

bus that came from opposite direction in which he was traveling did not take sufficient care at the turning and that was the reason for the accident. But I find that as per the scene mahazar, the road is straight for about 175 metres north. Hence, I find that the version of Pw1 in this regard cannot be true.

5. In the circumstances, I find that the concurrent findings of both the courts below are not to be interfered with in exercise of the revisional jurisdiction of this Court.

All the same, counsel for the revision petitioner has pleaded for leniency pointing out that the incident has taken place in 1991 and almost 17years have elapsed since the date of occurrence and the commencement of the proceedings. It is submitted that so far the accused/revision petitioner was facing the criminal proceedings and living under the shadow of impending imprisonment. In the circumstances, I find that the sentence is liable to be modified. Hence, the sentence imposed for the offence under Section 304(A)I.P.C. is modified to imprisonment till the rising of the court and to pay a compensation of

Rs.50,000/- (Rupees fifty thousand) to the L.Rs.of the deceased and in default to undergo simple imprisonment for six months. The fine amount, if realized, is to be paid to the legal representatives of the deceased. The sentence imposed for the offence under Section 279 I.P.C. is confirmed. The rest of the sentence imposed is also confirmed. The revision petitioner is granted four months time to remit the fine amount. He shall appear before the court below on 12—11-2007 to receive sentence. The Crl.revision petition is disposed of accordingly.

K.R.UDAYABHANU, JUDGE

ks.

K.R.UDAYABHANU, J

CRL.R.P.NO. 444 OF 1999
ORDER

12-7-2007